

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

LARRY T. FRYE, SR. AND VELETTA )  
FRYE, )  
Plaintiffs, )  
vs. ) 1:06-cv-1635-SEB-VSS  
)  
MEDCOMP, INC., )  
Defendant. )

**ENTRY GRANTING MEDICAL COMPONENTS, INC.'S MOTION TO DISMISS**

This cause is before the Court on the Motion to Dismiss [Docket No. 11] filed by Defendant, Medical Components, Inc. (improperly sued as "MedComp., Inc."), pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be granted. For the reasons detailed in this entry, we GRANT Defendant's Motion to Dismiss.

Factual Background

Plaintiff Larry T. Frye, Sr. brought this products liability suit after a catheter, which had been inserted into him for the administration of chemotherapy, allegedly malfunctioned at Bloomington Hospital in Bloomington, Indiana, on May 13, 2004. Notice of Removal Ex. A (Compl.) ¶¶ 3, 4. The catheter's alleged malfunction caused chemotherapeutic agents to leak into Mr. Frye's chest and neck, causing permanent damage, pain, scarring, and the need for further medical treatment. Id. at ¶¶ 5-8, 10.

On May 12, 2006, Plaintiffs filed a Complaint for damages in Monroe County

Circuit Court naming “MedComp, Inc.” as Defendant. Id. It alleged that Defendant was “an Indiana Corporation in the business of manufacturing, distributing, [sic] medical products including catheters for chemotherapy” and that Defendant “made and manufactured a defective product.” Id. at ¶¶ 2, 9. On June 13, 2006, attorney Cynthia Ball appeared on behalf of MedComp, Inc., an Indiana corporation, and on July 19, 2006 filed an Answer on behalf of MedComp, Inc.

On September 18, 2006, an alias summons was issued by the Monroe Circuit Court to “MedComp, Inc.” at an address in Harleysville, Pennsylvania – the address of Medical Components, Inc. (Notice of Removal Ex. A (Alias Summons).) The alias summons was served on Medical Components, Inc. on October 19, 2006. (Def.’s Mem. at 2.) Counsel appeared for Medical Components, Inc. on November 13, 2006, and filed a Notice of Removal to this court, based on diversity jurisdiction.<sup>1</sup> See 28 U.S.C. § 1332(a); 28 U.S.C. § 1441.

On December 5, 2006, Medical Components, Inc. filed the pending Motion to Dismiss Plaintiffs’ Complaint for failure to state a claim upon which relief can be granted.<sup>2</sup> It contends that Plaintiffs’ claims should be dismissed because Plaintiffs have never properly named Medical Components, Inc. as a defendant in this action and

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<sup>1</sup> The Notice of Removal asserted that the matter in controversy exceeded seventy-five thousand dollars (\$75,000.00) and was between citizens of different states. Plaintiffs are Indiana residents and Medical Components, Inc. is incorporated under the laws of, and has its principal place of business in, Pennsylvania. (Notice of Removal ¶¶ 3-5.)

<sup>2</sup> We note that Plaintiffs have not filed any response in opposition to Defendant’s motion within (or, for that matter, after) the time frame prescribed by our Local Rules. See L.R. 7.1(a).

because Plaintiffs' claims are time-barred. See Def.'s Mot. ¶¶ 1-3. We find this motion well-taken for the reasons spelled out below.

### Legal Analysis

#### I. *Standard of Review*

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant moves to dismiss this action for failure to state a claim upon which relief may be granted. A party moving to dismiss bears a weighty burden. It must show that the pleadings themselves fail to provide a basis for any claim for relief under any set of facts. Ed Miniat, Inc. v. Globe Life Ins. Group Inc., 805 F.2d 732, 733 (7th Cir. 1986), cert. denied, 482 U.S. 915 (1987).

As a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the case in which the allegations of the complaint itself clearly demonstrate that a plaintiff does not have a claim. Owner-Operator Indep. Drivers Ass'n v. Mayflower Transit, Inc., 161 F. Supp. 2d 948, 951 (S.D. Ind. 2001) (citing 5A Charles A. Wright and Arthur R. Miller, *Federal Practice & Procedure: Civil* § 1357). In addressing a Rule 12(b)(6) motion, we treat all well-pleaded factual allegations as true, and we construe all inferences that reasonably may be drawn from those facts in the light most favorable to the nonmovant. Lee v. City of Chicago, 330 F.3d 456, 459 (7th Cir. 2003); Szumny v. Am. Gen. Fin., 246 F.3d 1065, 1067 (7th Cir. 2001).

II. *Medical Components, Inc.'s Claim for Dismissal*

Medical Components, Inc. contends that Plaintiffs' claims against it should be dismissed because it has not been properly named in any complaint. Plaintiffs' Complaint named "MedComp, Inc.," an Indiana corporation, as the sole Defendant. Medical Components, Inc., a Pennsylvania corporation (which does manufacture medical supplies, including catheters), has no relationship to MedComp, Inc.<sup>3</sup> Medical Components, Inc. states that the only notice it received of the lawsuit was the alias summons served on it in Pennsylvania, which actually only provided notice that *MedComp, Inc.* was being sued (since the summons was incorrectly addressed to MedComp, Inc. at Medical Components, Inc.'s address).<sup>4</sup> Def.'s Mem. at 2.

Moreover, Medical Components, Inc. asserts that Plaintiff's claims against it are time-barred, because a proper summons was not served on it within two years after the alleged injury (here, May 13, 2006), as the statute of limitations requires. See Ind. Code § 34-20-3-1(b)(1); Dague v. Piper Aircraft Corp., 418 N.E.2d 207 (Ind. 1981). In a diversity case we cite Indiana procedural requirements, noting here that Indiana law holds that a complaint must be filed and summons tendered to the clerk within the statutory

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<sup>3</sup> Some of the confusion as to which corporation was the proper defendant here is likely due to the fact that "MedComp" is a registered trademark of Medical Components, Inc. See Def.'s Mem. at 2 fn. 2.

<sup>4</sup> Alternatively, Medical Components, Inc. asserts that, even if the alias summons *did* constitute proper service, it did not receive service of the alias summons until 159 days after the Complaint was filed, placing it outside the 120-day time limit prescribed by Federal Rule of Civil Procedure 4(m).

period for a civil action to be timely. See Indiana Trial Rule 3; Estate of Hunter ex rel. Hunter v. Young, 802 N.E.2d 1015, 1016-17 (Ind. App. 2004). Medical Components, Inc. contends that since it was not served with a summons until October 19, 2006 – apart from the fact that the summons named another company as the defendant – and has never been properly named in a complaint, Plaintiff is time-barred from asserting any claims against it arising from this incident. Def.’s Mem. at 3.<sup>5</sup>

Medical Components, Inc. has clearly met its burden here in establishing that dismissal is appropriate. Courts generally are hesitant to dismiss viable claims on the basis of misnomers or “scrivener’s errors,” and will liberally permit correction of such mistakes when the properly-named party is not prejudiced by them. See Hill v. Shelander, 924 F.2d 1370, 1375-76 (7th Cir. 1991) (“It is well settled that the Federal Rules of Civil Procedure are to be liberally construed to effectuate the general purpose of seeing that cases are tried on the merits. . . . To this end, amendments pursuant to Rule 15(c) [related to party name] should be freely allowed.”); Graves v. Gen. Ins. Corp., 412 F.2d 583 (10th Cir. 1969). However, this is not such a case. For one thing, Plaintiffs have made no effort to amend the original Complaint in order to properly name Medical Components, Inc. as Defendant. It seems clear, based on the issuance of the alias

<sup>5</sup> In addition, Medical Components, Inc. presents a well-developed argument that any attempted amendment to Plaintiffs’ Complaint in order to properly name Medical Components, Inc. as a defendant would not relate back to the date of filing of the Complaint, pursuant to Federal Rule of Civil Procedure 15(c), and thus would still be time-barred. See Def.’s Mem. at 3-9. This argument appears to us to be well-founded, but since Plaintiffs have to date made no such amendments – in fact, they have made no filings at all in this cause since its removal to this Court – we need not address such arguments at this juncture.

summons, that Plaintiffs must at some point have realized their mistake in serving MedComp, Inc. as Defendant. However, their realization came too late, as the service of the alias summons was outside the time periods permitted by Rule 4(m) and the Indiana Product Liability Act, and moreover outside the Indiana Trial Rule for timely service of process. See Estate of Hunter ex rel. Hunter v. Young, 802 N.E.2d 1015, 1016-17 (Ind. App. 2004). In addition, this is not a simple case of a misnomer – it might more accurately be described as a “mistaken identity” situation. See Dupuis, 325 A.2d at 782 (“misnomer involves misdescription of a party properly served and brought before the court, whereas mistaken identity is where the wrong party is brought before the court”). The naming of MedComp, Inc. as Defendant, and its description as “an Indiana Corporation,” establish that Plaintiffs initially brought their claims against the wrong party. Here, allowing claims to proceed against Medical Components, Inc. would “impose liability on a new and distinct party” outside the applicable time limits. See Tork-Hiis v. Commonwealth, 735 A.2d 1256, 1258 (Pa. 1999). Thus, Plaintiffs’ claims cannot be permitted to proceed.

Accordingly, Defendant’s Motion to Dismiss is GRANTED. IT IS SO ORDERED.

Date: 01/24/2007

  
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SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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